

2006 STATE BAR OF CALIFORNIA ENVIRONMENT SECTION
NEGOTIATION COMPETITION
FINAL ROUND FACT PATTERN (BOTH TEAMS)

INSTRUCTIONS: The final negotiation session is based on the same fact pattern as the earlier rounds. The confidential instructions from the earlier rounds, however, do not apply to this round. Reliance on the confidential instructions for previous rounds will not help and could harm your case. Please review the new information for both teams (below) and the new confidential instructions. Formulate a negotiation strategy. The final round negotiation will be 90 minutes. The final negotiation session is between TRAC/Community and TPI.

ADDITIONAL FACTS:

Negotiations between the plaintiffs and the State, and between the plaintiffs and TPI, have failed. Infighting, and lack of decisive leadership, within the plaintiffs' group have prevented it from coming to a consensus on its priorities for settlement. TPI has successfully used editorials in the local newspaper to slam TRAC in the press and create distrust of TRAC's motives among the TPI employees within the plaintiffs' group.

At the same time, TPI has fallen behind in its loan payments and other financial obligations, and its lenders and bondholders publicly have expressed dismay at the company's precarious market position, severely affecting TPI's bond rating. As a result, the company's profitability has continued to decline precipitously. Coupled with its inability to operate at full capacity -- both due to the pending lawsuits and the damage to its mill from the avalanche -- TPI now faces imminent bankruptcy unless immediate and drastic measures are taken. Aware of this, TPI's largest and most influential lender has called its loan, demanding full payment of its \$100 million loan to the company within 60 days, unless TPI can provide a good-faith showing that it can get its operations going and its business back on track within that time. TPI most certainly cannot afford this result. In response, in addition to recommencing its timber operations, TPI has proposed to begin excavating and selling aggregate (sand and gravel for the construction industry) from the Steelhead River pursuant to rights it holds for extraction of up to 250,000 yards per year (which, to date, it has not exercised). TPI also has proposed selling off certain commercial and residential properties it holds within the town of Salmon Run to help reduce its debt.

TRAC, the community and TPI all realize the dire nature of this most recent response of TPI's lender (and, for some, TPI's newest proposals to mitigate its debt), and that all of them are at risk as a result: TRAC could lose any ability it now has to save and protect the old-growth trees held by TPI; TPI's employees face certain loss of their pensions, their salaries and their benefits -- in effect, their livelihoods; the community risks losing its largest employer and taxpayer; and TPI's very existence is at stake. Given the time deadline imposed by TPI's lender, the parties must resolve their collective

differences and settle this case quickly. In light of the limited funds currently available to TPI for settlement, and the different priorities between (and even within) the parties, however, difficult negotiations remain and what constitutes agreement remains to be seen.

The plaintiffs and TPI must reach agreement on the following:

1. Compensation for the damage to the homes and businesses of Salmon Run.
2. Restoration of Devil's Avalanche and the Steelhead River.
3. Continuing operation of TPI.
4. Preservation of old growth trees held by TPI.